

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

IN RE: ETHICON, INC., PELVIC REPAIR SYSTEM PRODUCTS LIABILITY LITIGATION THIS DOCUMENT RELATES TO ETHICON WAVE 1 CASES	MASTER FILE NO. 2:12-MD-02187 MDL No. 2187 Joseph R. Goodwin UNITED STATES DISTRICT JUDGE
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**DEFENDANTS JOHNSON & JOHNSON AND ETHICON, INC.’S
MOTION FOR PROTECTIVE ORDER UNDER PTO 205**

Pretrial Order 205 states that “[t]he court expects leadership counsel for plaintiffs and the Ethicon defendants to resolve issues related to confidential designations well before the filing of motions” and that if the parties are unable to agree, a consolidated motion to seal will be due on March 9, 2016. *See* PTO 205, p. 5. Ethicon has attempted to comply with PTO 205 and resolve confidentiality issues with Plaintiffs’ counsel, but Plaintiffs have refused to meaningfully engage in the process.

Plaintiffs’ position appears to be that none of Ethicon’s documents are confidential. When pressed as to what documents are actually at issue in the Wave 1 filings, Plaintiffs provided an unmanageable and unrealistic list of thousands of documents, placing the burden on Ethicon to parse the list and attempt to determine its position on confidentiality. With the deadline for the consolidated motion to seal looming, Ethicon has no choice but to seek the Court’s assistance and hereby requests that the Court order Plaintiffs to produce a list of documents they reasonably anticipate filing with the Court.

BACKGROUND AND ARGUMENT

On February 24, 2016, Plaintiffs' counsel contacted Ethicon's counsel about document confidentiality issues, stating that they "do not believe that any of the [E]thicon documents are confidential or should be filed under seal." *See* Email Chain, Ex. A. Ethicon's counsel responded, asking Plaintiffs' counsel to identify any documents they intended to file bearing a confidentiality designation so that Ethicon could determine what course of action to take. *Id.* Plaintiffs' counsel responded with a chart of some **9,267 documents** they "may use." *Id.*; *see also* Chart, attached as Ex. B. Ethicon requested that Plaintiffs identify which documents they reasonably anticipated filing with the Court, but Plaintiffs have not responded. *See* Ex. A.

Counsel for Ethicon is hard-pressed to believe that Plaintiffs actually anticipate attaching 9,267 confidential Ethicon documents to their upcoming motions. Moreover, the documents on Plaintiffs' list do not appear to deal with specific Plaintiffs, but are mostly Ethicon documents that deal with general issues. Therefore, it is anticipated that many of the same documents will be filed in each case, as the motions will likely be substantially similar for cases involving the same products and will raise many of the same issues.

PTO 205 contemplates that the parties engage in a good-faith process to confer about the confidentiality of documents. Plaintiffs' list of 9,267 documents—thousands of which they could not possibly use in their motions—does not constitute a good-faith conferral on the issue of confidentiality.

Though Ethicon has been able to resolve all confidentiality issues with MDL Plaintiffs in the past, Ethicon cannot assume there are no further confidentiality issues in this MDL and must be given a reasonable opportunity to examine the documents at issue.

CONCLUSION

For these reasons, Ethicon requests that the Court order Plaintiffs to produce a list of documents they reasonably believe they will attach to their Court filings. In addition, Ethicon requests that Ethicon be granted an extension of time to file a motion to seal until after it has had a reasonable opportunity to review the shortened list of documents and confer with Plaintiffs.

Dated: March 8, 2016

Respectfully submitted,

/s/ Christy D. Jones

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CERTIFICATE OF SERVICE

I hereby certify that on March 8, 2016, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system which will send notification of such filing to CM/ECF participants registered to receive service in this MDL.

/s/ Christy D. Jones

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